

suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments.

(d) *Debarring Official's decision.* (4) The Debarring Official's final decision shall be based on the administrative record. In those actions where additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall be those findings prepared by the Fact-Finding Official. Findings of fact shall be final and conclusive unless, within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, or unless set aside by a court of competent jurisdiction. The Fact-Finding Official shall be provided a copy of the Debarring Official's final decision.

[61 FR 39857, July 31, 1996, as amended at 76 FR 7691, Feb. 11, 2011]

#### **909.406-70 Requests for reconsideration of debarment.**

(a) At any time during a period of debarment, a respondent may submit to the Debarring or Suspending Official a written request for reconsideration of the scope, duration, or effects of the suspension/debarment action because of new information or changed circumstances, as discussed at 48 CFR 9.406-4(c).

(b) In reviewing a request for reconsideration, the Debarring or Suspending Official may, in his or her discretion, utilize any of the procedures (meeting and fact-finding) set forth in 909.406-3 and 909.407-3. The Debarring or Suspending Official's final disposition of the reconsideration request shall be in writing and shall set forth the reasons why the request has been granted or denied. A notice transmitting a copy of the disposition of the request for re-

consideration shall be sent to the respondent.

[61 FR 39857, July 31, 1996, as amended at 74 FR 36362, July 22, 2009; 76 FR 7692, Feb. 11, 2011]

#### **909.407 Suspension.**

##### **909.407-2 Causes for suspension.**

(d) The Suspending Official may suspend an organization or individual—

(1) Indicted for or suspected, upon adequate evidence, of the causes described in 909.406-2(c)(1);

(2) On the basis of the causes set forth in 909.406-2(d)(2); or

(3) On the basis that an organization or individual is an affiliate of a suspended or debarred contractor.

[61 FR 39857, July 31, 1996, as amended at 74 FR 36363, July 22, 2009]

##### **909.407-3 Procedures.**

(b) *Decisionmaking process.* (1) In actions based on an indictment, the Suspending Official shall make a decision based upon the administrative record, which shall include submissions made by the contractor in accordance with 909.406-3(b)(1) and 909.406-3(b)(3).

(2) For actions not based on an indictment, the procedures in 909.406-3(b)(2) and 48 CFR 9.407-3(b)(2) apply.

(3) Coordination with Department of Justice. Whenever a meeting or fact-finding conference is requested, the Suspending Official's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such Department of Justice official requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall—

(i) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(ii) Deny the request for a meeting or fact-finding and base the suspension decision solely upon the information in the administrative record, including